

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

CAE USA, INC.,
A Florida corporation,

Plaintiff,

vs.

DEPARTMENT OF THE NAVY,

Defendant.

COMPLAINT FOR PERMANENT INJUNCTIVE RELIEF
AND DECLARATORY RELIEF

The Plaintiff, CAE USA, Inc., (“CAE”), by and through undersigned counsel, hereby sues the defendant, the Department of the Navy (“Navy”) for permanent injunctive relief, and declaratory relief, as follows:

1. In this action, CAI seeks to prevent the Navy from disclosing trade secrets or confidential business or financial records supplied by CAE to the Navy in connection with the approval of CAE as a provider of simulation and training services to the Navy.
2. This Court has subject matter jurisdiction pursuant to Title 5, United States Code, section 552, et seq., The Freedom of Information Act.
3. The conflicting positions of the parties with respect to whether the information in question is subject to disclosure also gives rise to an actual and justiciable controversy cognizable under the Federal Declaratory Judgment Act, Title 28, United States Code, section 2201, et seq.
4. Venue is proper in the Middle District of Florida pursuant to Title 28, United States Code, section 2201, et seq.
5. CAE is, and was at all times relevant to this litigation, a corporation organized and existing under the laws of the State of Florida with its place of business at 4908 Tampa West Boulevard, Tampa, Florida.
6. Award of Contract N61339-01-D-0725
 - a. CAE is in the business of providing simulation technologies for training solutions for aerospace and military customers.

- b. On or about May 4, 2001, the Navy issued a Request for Proposal (“Request”) for vendors of simulation services. The Request was designed to obtain proposals from qualified vendors to establish an approved vendors list to whom the Navy could issue further task orders relating to simulation and training

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- e. As a result of the Request and ensuing process, the Navy selected seventeen vendors, including CAE, from which to purchase simulation and training services in the “Virtual Domain.” These vendors are now qualified to submit competing proposals for services in response to specific task orders issued by the Navy.
- f. The CAE contract contains trade secret and confidential business information belonging to CAE. Specifically, section B of the CAE contract sets forth “burdened labor rates”, i.e., labor rates that CAE intends to use in formulating bids for Time and Material task orders issued by the Navy. Each project described in a Navy Time and Material task order requires that certain tasks be performed by specialists, including but not limited to engineers, analysts, and scientists. In responding to such a task order issued by the Navy, each approved vendor must estimate the amount of time each specialist will require to complete the proposed task. The “burdened labor rates” are the rates CAE intends to utilize in preparing a proposal in response to a Navy Time and Material task order.

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15. The FOIA request.

- a. On information and belief, on or about March 23, 2004, the Navy received a Freedom of Information Act (“FOIA”) request from FOIA Group, Inc. (“FOIA Group”), for a complete copy of Contract N61339-01-D-0725. On information and belief, FOIA Group submitted the FOIA request on behalf of one or more of the sixteen vendors, other than CAE, approved by the Navy to provide simulation service in the “Virtual Domain.”
- b. On or about March 23, 2004, the Navy sent a letter to CAE informing it of the FOIA request and of Navy’s intention to produce a copy of the CAE contract, Contract N61339-01-D-0725, on or about April 6, 2004. A complete and accurate copy of this letter is attached as Exhibit B.
- c. By letter dated March 26, 2004, CAE informed the Navy that it considered certain portions of the CAE contract to contain confidential business information that, if released, would cause CAE substantial competitive harm. A complete and accurate copy of that letter is attached as Exhibit C.

- d. By letter dated April 5, 2004, CAE provided further clarification of its position that certain portions of the CAE contract contained trade secret or confidential business information. A complete and accurate copy of that letter is attached as Exhibit D.
- e. By letter dated April 27, 2004, the Navy informed CAE that it intended to deliver a copy of the CAE contract, Contract N61339-01-D-0725, in response to the FOIA request without redacting the burdened labor rates listed in the contract. A complete and accurate copy of that letter is attached as Exhibit E.
- f. The information that the Navy seeks to disclose pursuant to the FOIA request constitutes “trade secrets” or “confidential or financial information” within the Meaning of Section 552 of the FOIA. 5 U.S.C. sec. 552(b)(4).
- g. The burdened labor rates depicted on pages 8-9 of the CAE contract, Contract N61339-01-D-072, are protected from disclosure under the Trade Secrets Act, 18 U.S.C. sec. 1905.
- h. In light of the fact that burdened labor rates are protected under the Trade Secrets Act, the Navy’s decision to an unredacted copy of the CAE contract, Contract N61339-01-D-072, to the FOIA Group constitutes an agency action with is arbitrary, capricious, and an abuse of discretion not otherwise in accordance with the law,” within the meaning of the Administrative Procedures Act, 5 U.S.C. sec. 706(2)(A) (1998).

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WHEREFORE, Plaintiff, CAE, demands relief in its favor and against Defendant, the Department of the Navy, as follows:

- a. That this Court enter an order declaring that the “burdened labor rates” referred to in the CAE contract, Contract N61339-01-D-07, are “trade secrets” and “confidential commercial or financial information” within the meaning of the Federal Trade Secrets Act and the Freedom of Information Act;
- b. That a permanent injunction be entered in favor of CAE and against the Navy, permanently restraining the Navy from disclosing the CAE contract, Contract N61339-01-D-07, without redacting the burdened labor rates therein;
- c. That this Court grant such other and further legal and equitable relief against the Navy to which it finds CAE entitled.